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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of:

Implementation of the  
Cable Television Consumer  
Protection and Competition  
Act of 1992

Tier Buy-Through Prohibitions

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MM Docket 92-262

COMMENTS OF THE COMMUNITY ANTENNA TELEVISION  
ASSOCIATION, INC.

Community Antenna Television  
Association, Inc.  
3950 Chain Bridge Road  
P.O. Box 1005  
Fairfax, VA 22030-1005  
703/691-8875

January 13, 1993

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1. The Community Antenna Television Association, Inc., ("CATA"), hereby files comments in the above-captioned proceeding. CATA is a trade association representing owners and operators of cable television systems serving approximately 80 percent of the nation's more than 60 million cable television subscribers. CATA files these comments on behalf of its members who will be directly affected by the Commission's action.

INTRODUCTION

2. Section 3(b)(8) of the Cable Act of 1992 generally prohibits cable systems from requiring subscribers to buy any

tier of service beyond the basic tier in order to gain access to per-channel or per-program service offerings. The basic message of the Congress is reasonably straightforward. It has left to the Commission the all-important details of regulation - the extent to which technological limitations may prevent immediate compliance, at what point system modifications should make a system subject to the "buy-through" prohibition restriction, the effect compliance might have on a system's rates, etc. In its Notice, the Commission has accurately presented the range of its responsibilities pursuant to the Act. CATA urges the Commission, in its deliberations, to recognize the diversity of the cable industry, the varying sizes and technical configurations of the systems, and to adopt a regulatory plan that does not affect the ability of cable systems to offer a flexible range of marketing plans to their subscribers. CATA believes the Commission should adopt regulations consistent with the following principles: Addressability means full addressability; hybrid systems should be permitted to install addressable converters only for subscribers who have requested service requiring them; the Commission's administration of its buy-through regulations should be as simple as possible; the buy-through provisions should be given a narrow reading in order to permit cable systems to develop competitive marketing plans.

## **FULL ADDRESSABILITY IS A PRE-REQUISITE FOR COMPLIANCE**

3. It is clear from the Cable Act that the Congress was aware of the technological features of a cable system that might prevent it from immediate compliance with the buy-through prohibition restriction - thus the exemption of up to ten years for systems that cannot, for technical reasons, comply. CATA agrees generally with the Commissions statement that "...cable systems which were not designed and built with (or upgraded to incorporate) addressable technology are by definition within the scope of the Act's 10-year exemption." We urge, however, that the Commission make its finding more specific. "Addressable technology," for purposes of the buy-through regulations, should mean complete addressability and include both the system's transmission system from the head-end as well as addressable converters. Even though addressable converters can cost twice as much as non-addressable converters, without them there is no other practical way for systems to comply with the buy-through provision. The cost of providing addressable converters, however, is bound to affect subscriber rates and, clearly, was what concerned the Congress when it permitted the exemption. Any regulations the Commission adopts should not result in requiring wholesale upgrading to addressable converters.

## **HYBRID SYSTEMS**

4. Some systems are designed to accommodate addressable converters, but because of cost or other considerations, have chosen not to install them system-wide. On these systems addressable converters have been installed only where subscribers have requested pay services. In these "hybrid" situations, to require a system to install addressable converters for all of its subscribers would be tantamount to requiring an immediate system re-build - again, the very type of situation that Congress created the exemption to prevent. CATA suggests that during the exemption period, hybrid systems should be permitted to continue to supply additional converters only in those instances in which there is a proven demand for service. It should be noted that cable systems may well decide to charge higher rates to those subscribers requiring addressable converters and a lower rate to other subscribers. Such a dual rate structure would be desirable because the costs of a transition to complete addressability could be passed on subscribers gradually, during the exemption period.

## **THE COMMISSION SHOULD SEEK ADMINISTRATIVE SIMPLICITY**

5. The Cable Act states that the buy-through prohibition restriction "shall not apply" for up to ten years to systems that

do not employ addressable technology or which for other technological reasons cannot unbundle pay services from services provided on tiers other than the basic tier. The Act does not specify whether the exemption is automatic or whether the Commission is intended to engage in some process to render a judgement in each case in which a system believes it qualifies. Given the thousands of systems, particularly small systems, that will be entitled to the exemption, it is difficult to imagine that the Commission will want to establish another processing line. Such a procedure would be especially burdensome for systems with 1000 or fewer subscribers and thus inconsistent with Section 543(i) of the Cable Act which instructs the Commission to reduce administrative burdens for such systems. It is all the more important, therefore, that the Commission craft exemption qualifications with sufficient clarity that systems will be able to make their own judgements without fear that the Commission, a franchising authority or a confused subscriber will second guess them. Assuming the Commission adopts the exemption policy urged above, it would then be a simple matter for systems, as part of their annual reporting requirement, to indicate whether they are fully addressable. The Commission would then have data, at any given time, on industry-wide, and system specific, progress.

## MARKETING FLEXIBILITY

6. For many years the Commission has pursued the philosophy of encouraging competition and favoring business judgements over regulation. One of the stated purposes of the Cable Act is to promote competition in the provision of video services to the public. It is in this context that CATA urges the Commission to implement the buy-through provisions of the Cable Act, as well as other portions of the Act, in a manner that leaves cable television operators maximum flexibility to compete in the present, as well as future, video services marketplace. In its Notice the Commission discusses various pricing and marketing schemes and requests comment on whether these schemes discriminate "between subscribers to the basic service tier and other subscribers with regard to the rates charged for video programming offered on a per channel or per program basis." We believe that the only purpose of the buy-through prohibition restriction is to prevent a system from making a subscriber buy intermediate tiers of service in order to buy pay services. Other marketing techniques were not intended to be, and should not be affected by the buy-through prohibition restriction. We note, for instance, that the Commission asks whether "multiple

channel discounts that are not channel specific [can] be offered without running afoul of the discrimination prohibition," or whether a subscriber who buys one premium service can be offered a lower price for buying another. The answer in both instances must be, "Of course." Indeed, if a cable operator so chose, in order to promote both pay services and intermediate tiers, it could offer intermediate tiers at a discount if a subscriber bought pay services. In an increasingly competitive environment, cable systems must be able to offer flexible, imaginative marketing plans. It is vital that the Commission not give the buy-through provision of the Act such an expansive reading as to preclude practices it was never intended to reach.

#### CONCLUSION

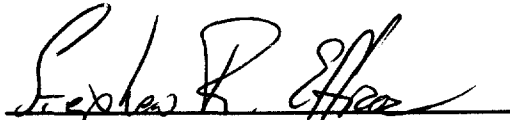
7. The Commission is in a position to apply its buy-through regulations in a manner that complies with the will of the Congress, but that is least disruptive and costly to the thousands of cable television systems that will be affected. CATA urges the Commission to take in to consideration the diversity of cable systems' architecture and state of technical capability, and the need for systems to be able to market




flexibly and aggressively in order to meet the competitive challenges encouraged both by the Cable Act and the Commission.

Respectfully submitted,

THE COMMUNITY ANTENNA TELEVISION  
ASSOCIATION, INC.

by:   
Stephen R. Effros  
President

by:   
Robert J. Ungar  
General Counsel

Community Antenna Television  
Association, Inc.  
3950 Chain Bridge Road  
P.O. Box 1005  
Fairfax, VA 22030-1005

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